

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS.126, 127 AND 128 OF 1993

WITH

FIRST APPEAL NOS.1612 TO 1631 OF 1993

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

RAMANBHAI PRABHUDAS BECHARDAS

Versus

SPL. LAND ACQUISITION OFFICER

Appearance:

MR SANJAY M AMIN for Appellants in FA Nos.126, 127
and 128 of 1993 and Mr. ND GOHIL, AGP for respondents

MR ND GOHIL, AGP, for Appellant in FA Nos.1612 to 1631 of
1993 and MR SANJAY M. AMIN for Respondents.

CORAM : MR.JUSTICE Y.B.BHATT

and

MR.JUSTICE M.C.PATEL

Date of decision: 07/11/2000

1. This is a group of appeals under section 54 of the Land Acquisition Act read with section 96, CPC, challenging the common judgement and awards passed by the Reference Court under section 18 of the Land Acquisition Act.

2. The first three appeals herein have been filed by the original claimants for enhanced compensation, whereas First Appeal Nos.1612/93 to 1631/93 have been filed by the State for reducing the amount of compensation determined by the Reference Court. The acquisition in the present group of cases was for the purpose of construction of an approach road from Ambapur to join the highway between Ahmedabad and Kalol. The acquired lands are situated in the village Adalaj and the notification under section 4 was issued on 18th June 1981. The Land Acquisition officer in his award under section 11 had determined the market value of the acquired lands at Rs.2.50 per square meter as against the claimants' claim for Rs.40/- per square meter. The Reference Court by the impugned judgement and awards has determined the market value of the lands in question at Rs.6.60ps per square meter.

3. We have heard the learned counsel for the respective parties, and perused such oral and documentary evidence on record to which our attention has been drawn.

4. One of the contentions raised is that the Reference Court has while appreciating the claimants' evidence on the agricultural yield obtained from the acquired lands has proceeded on the basis that only one crop was obtained per year as against which the oral evidence of the claimants indicated that they were obtaining three different crops. The Reference Court has taken this view because village forms 7 and 12 indicated only one crop. However, we do not propose to enter into a detailed discussion on this aspect of the matter inasmuch as other more reliable evidence is available on record.

5. The claimants relied upon Exh.42 which is a copy of an earlier award by the Reference Court under section 18 of the said Act. The lands acquired and dealt with by Exh.42 are situated in the same village viz. Adalaj. The purpose of acquisition in respect of the lands covered by Exh.42 was to construct a bridge on the same

Ahmedabad-Kalol Highway, to which an approach road was to be made by acquiring the instant lands. The distance between the instant lands and the lands acquired under Exh.42 is only two kilometers. Furthermore, there is no controversy that the lands acquired in the instant case are agricultural lands as also the lands acquired and dealt with by Exh.42.

6. The Reference Court has apparently taken a view that the claimants cannot rely upon Exh.42 "by riding two horses at the same time", inasmuch as they have also led evidence as to agricultural yield, fertility, etc. In our opinion, this approach is not justified nor legally sustainable. It is open to a land owner to lead evidence in support of his claim, and the nature of the evidence cannot be curtailed within fixed parameters. If the valuation of the lands can be arrived at with reference to agricultural yield method, it is acceptable, as also other types of evidence which lead to the same result. It is then for the Reference Court to evaluate all the evidence on record collectively and not selectively.

7. The trial court was also in error in not relying upon Exh.42 merely by observing that the purpose of acquisition was different. As already stated above, the purpose of notification is only the purpose stated in the notification under section 4. However, the object of acquisition and the use to which the acquired lands are to be put is not one of the critical components of the notification which is published under section 4 of the said Act. The language used in the appropriate column in the notification issued under section 4 is only loosely descriptive, and is not exhaustive in any manner.

8. The trial court was also in error in not relying upon Exh.42 because there was the time lag in the dates of publication of section 4 notification.

9. As noted above, the distance between the two groups of lands was only two kilometers and basically the purpose was for constructing an approach road. Furthermore, the notification in the instant acquisition is 18th June 1981, whereas the section 4 notification in Exh.42 is dated 13th December 1979. In other words, the acquisition dealt with by Exh.42 was about one and half years prior to the present acquisition, and this difference of one and half years cannot be said to be so large so as to render Exh.42 incomparable for the purpose of determination of market value in the instant case.

10. It is well settled and accepted as a principle in

law, that lands which are otherwise comparable, and where the market value has been determined by a prior award, can serve as a guide and constitutes good evidence for determination of market value in subsequent and following acquisitions. Furthermore, it is also accepted as a principle in law, that an increment of about 10% per annum is granted as a rise in the market value of land with the passage of time. In the instant case, the acquisition follows after about one and half years from the date of section 4 notification contemplated by Exh.42. This would normally justify an increase of about 15% over the market value determined by Exh.42. Exh.42 determines the market value of the relevant lands at Rs.25/- per square meter. However, the question of granting any increment over and above Rs.25/- per square meter would not arise on the facts of the case since the claimants have in their appeals restricted their claim to Rs.24.60ps. per square meter.

11. We do not propose to enter into a detailed discussion on two other previous awards viz. Exh.41 and Exh.43 on record since the lands dealt with by those awards are situated in different villages and also different from the point of view of the situation and location. Exh.41 pertains to lands in village Khoraj, which is closer to Ahmedabad city and also has a railway station. Exh.43 pertains to acquisition of lands in village Vavol, where the purpose of acquisition was for creation of Sector 16 in the city of Gandhinagar. Thus, Exh.41 and Exh.43 would not represent the true market value of the instant lands.

12. In the premises aforesaid, we find that the judgement and awards passed by the Reference Court in favour of the claimants are totally inadequate and therefore require to be modified. We accordingly determine the market value of the lands under acquisition at Rs.25/- per square meter, however awarding the claimants only Rs.24.60ps per square meter.

13. It is clarified that the compensation payable on the basis of the aforesaid rate determined by us viz. Rs.24.60ps per square meter will also entail other statutory additions such as solatium at 30% and compensation under section 23(1-A) at the rate of 12% for the period commencing from the date of section 4 notification upto the date of the award of the Collector or the date of taking possession of the lands whichever is earlier. The claimants shall be further entitled to additional compensation under section 28 of the Act at the rate of 9% per annum on the excess amount from the

date of taking possession of the land upto the date of payment of such excess amount into the court for the first year and at the rate of 15% per annum for the subsequent period after one year.

14. Consequently the three appeals mentioned hereinabove by the claimants are allowed, whereas the appeals by the State are dismissed. There shall be no order as to costs in all these proceedings.

15. Decree accordingly.

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